



Missouri Department of Natural Resources
Air Pollution Control Program

April 1, 2004

**Air Pollution Control Program Guidance Document on
Part 70 (Title V) Operating Permit Deviation/Exceedance Reporting
Frequency Requirements**

Purpose and Scope:

The purpose of this document is to provide consolidated guidance to permitting authorities and sources in the state of Missouri on selecting appropriate reporting frequencies for deviations and exceedances at Part 70 (Title V) sources which are subject to operating permit conditions. This guidance document is intended to encourage consistent application of the reporting requirements of 10 CSR 10-6.065(6)(C)1.C.(III) with 40 CFR §70.6(a)(3)(iii) across the state. Permitting agencies will consider this guidance document and specify the frequency of the reporting required in the operating permit. Additional clarification may be provided in the Statement of Basis that accompanies each operating permit. This document focuses only on the frequency of reporting and does not include consolidated guidance on the required content of each report.

Applicable Requirements and Reference Information

Please refer to Appendix A for a listing of applicable requirements and reference information relating to the frequency of reporting.

Reporting Frequency

There are several varying requirements regarding the reporting of deviations and exceedances as well as the interpretation of "prompt". In an attempt to clarify the requirements, the following reporting frequencies will be discussed in the guidance document: as soon as practicable, 2 day, 10 day, quarterly, semi-annual and annual.

The governing primary requirement regarding reporting frequency is that specified in the underlying applicable requirement/regulation. However, if the underlying requirement is silent on reporting frequency requirements, then the operating permit must "gap-fill" and identify an acceptable reporting frequency sufficient to demonstrate compliance.

(NOTE: Deviations can exist in many forms. "Deviation" does not apply exclusively to departures from emission limitations or standards. Deviations can be from an emission limitation, operating parameter of an emission unit or control device, work practice standards, operational limitation, monitoring, record keeping and reporting requirements.)

The "prompt" reporting of deviations serves a very important role in protecting the public health and reducing the risk associated with industry practices. The purpose of the deviation reports is to identify areas of fluctuation with a requirement and the action taken by the installation to get the process back into compliance with a requirement. The deviation reports give the APCP the opportunity to provide constructive feedback within a short period of time for alternate compliance scenarios while a process is being repaired; or suggestions on the course of action

taken to minimize emissions and return the installation to compliance. The APCP requires the following minimum reporting frequencies of permit deviations/exceedances.

Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted to the permitting authority based on the following schedule:

As soon as practicable Reporting Requirements

Deviations that pose an imminent and substantial danger to public health, safety or the environment shall be reported as soon as practicable.

Imminent and substantial danger conditions must also be included in the semi-annual monitoring (SAM) report and the annual compliance certifications (ACC).

2 day Reporting Requirements

If the permittee wishes to assert an affirmative defense of an emergency or upset condition, then the notice of any deviation resulting from an emergency or upset condition must be submitted verbally or in writing within two working days after the date on which the emission limitation is exceeded due to the emergency. (Please refer to the Appendix or 10 CSR 10-6.065(6)(C)7. for the definition of an emergency or upset condition).

Any installation which has a malfunction that results in excess emissions that exceeds 1 hour is required to submit a written report within two days (10 CSR 10-6.050). [This report can be combined with the report in the next paragraph if the installation is subject to a Maximum Achievable Control Technology (MACT) standard and the general provisions of 40 CFR Part 63, Subpart A.]

If the installation is subject to a MACT standard (40 CFR Part 63) and the general provisions of 40 CFR Part 63, Subpart A, requiring a Startup, Shutdown and Malfunction (SSM) Plan, then a report of any deviation from the procedures specified in the SSM Plan must be reported within two working days after the action. The two day report must include the actions taken for the event. If the two day notification is submitted, the installation must also submit a letter within seven working days after the end of the event, in accordance with §63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the Administrator).

Emergency and upset conditions and actions inconsistent with the SSM Plan must also be included in the SAM and ACC, regardless of whether an affirmative defense was requested or not.

10 day Reporting Requirements

Deviations related to quantifiable emission limitations and operating parameter ranges that are not monitored continuously and do not contain an underlying requirement with a specified reporting frequency. Quantifiable emission limitations and operating parameter ranges contain specific limitations for regulated pollutants with a defined time constraint. For example, a quantifiable limitation would be in the terms of lbs/hr, tons/month, rolling 12-month total, etc. When an applicable requirement does not contain a reporting requirement for deviations and exceedances

from the emission limitation and operating parameter ranges, the operating permit conditions shall require the information to be reported within ten days of the installation first becoming aware of the exceedance/deviation.

The “prompt” reporting of the deviations and exceedance provides the opportunity for the APCP to work with an installation to resolve a potential problem prior to it becoming detrimental to the public health and environment. When receiving a “prompt” report of the deviation and exceedance, the APCP can work with the installation to determine a course of action to prevent re-occurrence of the event. The course of action could be one of several different mechanisms: a compliance plan for the process, re-evaluation of the operating parameter range, re-evaluation of the operating parameters as performance indicators, more frequent inspections when a certain level is reached on an operating parameter to maintain a control device, etc. In addition, the ten day reporting requirement provides the opportunity for the APCP and the installation to be on the same page with the time period the installation has been out of compliance.

Deviations/exceedances from quantifiable emission limitations and operating parameter ranges must also be included in the SAM and ACC.

Quarterly Reports

The applicable requirements for continuous emission monitoring and continuous opacity monitoring systems (CEMS and COMS) require the installation to submit quarterly reports of the continuously recorded data. These quarterly reports are required by the underlying requirement to contain the data to determine both deviations and exceedances.

The COMS reporting requirements under 10 CSR 10-6.220, also serves a prompt reporting of deviations. Opacity emissions are monitored by a COMS and are averaged on a six minute period and reported quarterly with the nature and cause of the excess emissions. Please note, excess emissions do not necessarily result in an exceedance – it all depends on the information concerning the excess emissions (start-up, shutdown, malfunction, averaging period, etc.) The CEMS reporting requirements under construction permit special conditions and other applicable requirements require the installation to submit quarterly reports. Similar to the COMS, these quarterly reports required by the underlying requirement also contain the data to determine both deviations and exceedances.

Therefore, requiring the installation to submit the quarterly reports for the CEMS and COMS requirements is not a duplicative requirement and satisfies both the deviation/exceedance reporting requirements of the Part 70 (Title V) regulations and the reporting requirements of the underlying regulation.

In addition, to be consistent across the state with continuous monitoring systems, all continuous monitoring systems (pressure drops, etc.) and predictive emission monitoring systems (PEMS) should mirror the requirements for the CEMS and COMS. Therefore, installations that monitor operating parameters on a continuous basis or mirror processes and parameters with computer program or data reduction systems, will be able to submit deviation and exceedance reports on a quarterly basis.

Deviations/exceedances from continuous monitoring systems (operating parameters, emissions, etc.) must also be included in the SAM and ACC.

Semi-Annual Monitoring Reports

The semi-annual monitoring report serves three purposes:

- 1) to satisfy the deviation reporting requirements for deviations/exceedances of work practice standards and reporting requirements of certifications that do not contain quantifiable emission limitations and operating parameter ranges;
- 2) to satisfy semi-annual monitoring reports required by the underlying requirement; and
- 3) to satisfy the semi-annual monitoring report requirements under 10 CSR 10-6.065(6)(C)1.C.(III)(a) and (b).

If an installation is uncontrolled and is not subject to any emission limitations other than work practice standards [e.g., dust suppression plan; keeping lids on solvent containers], then the installation can submit deviations from the work practice standards in the semi-annual report, unless more frequent or specific reporting is identified in the underlying applicable requirement or unless the APCP determines on a case-by-case basis that more frequent reporting is required. Work practice standards are operating procedures that an installation must adhere to, but do not contain specific quantifiable emission limitations. Work practice standards are requirements that an installation must follow while operating, but do not specify a limit on the amount of emissions or a defined time constraint. Some examples of work practice standards are “the installation shall use closed containers”, “all personnel shall be trained once per year”, “the permittee shall prepare and maintain a written work practice implementation plan” and the “the permittee shall place solvent clothes in closed containers”.

The APCP believes it is important to report the impact of the exceedance for these specific housekeeping measures is usually not as severe as a deviation from a quantifiable emission limitation. Deviations from specific work practice standards are basically a failure to maintain operating protocols. The APCP believes it is acceptable for the installation to report any departure from the afore mentioned work practice standards at least semi-annually, unless the underlying requirement requires a more frequent submission of deviation reports or the APCP has written a more detailed condition in the operating permit on a case-by case basis. The APCP will examine work practice standards and the underlying requirements on a case-by-case basis. When a specific underlying requirement requires specific reporting of work practice standards, then the underlying requirement governs. A good example of this is the reporting requirements of 40 CFR Part 63, Subpart X, *National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting*. According to §63.550(b),

“The owner or operator of a secondary lead smelter shall comply with all of the reporting requirements under §63.10 of the General Provisions. The submittal of reports shall be no less frequent than specified under §63.10(e)(3) of the General Provisions. Once a source reports a violation of the standards or excess emissions, the source shall follow the reporting format required under §63.10(e)(3) until a request to reduce the reporting frequency is approved.”

For those installations subject to the startup, shutdown and malfunction requirements contained in the General Provisions of 40 CFR Part 63, Subpart A, the semi-annual report is required to include the information for the periodic startup, shutdown and malfunction reports contained in §63.10(e)(5) as well as the actions inconsistent with the startup, shutdown and malfunction plan described above in the two day reporting requirements. According to §63.10(e)(5), the installation is required to report the actions consistent with the procedures in the source’s startup, shutdown and malfunction plan on a semiannual basis (or on a more frequent basis specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source’s Part 70 (Title V) permit).

The SAM report is required to identify all instances of deviations from permit requirements since the previous ACC or SAM report. In addition to identifying the deviations, the principal purpose of SAM reports is to summarize all monitoring required during the reporting period and (where applicable) to provide information on any separate monitoring reports required by the permit (such as reports required by 40 CFR Parts 60, 61, or other applicable requirements) that are either submitted at this time or were submitted previously during the reporting period. Such a summary in turn provides a context within which permitting authorities may assess the adequacy of the identification of deviations. By including a semi-annual summary of the deviations, the permitting authority and the installations can determine whether the reporting is sufficient to demonstrate compliance or whether more or less frequent reporting is necessary.

The APCP developed forms for the SAM reports and ACCs, information regarding those forms is described below under Annual Compliance Certifications.

Annual Compliance Certifications

The annual compliance certification must identify all instances of deviations from permit conditions that have occurred since the previous ACC or SAM. The ACC is required to satisfy the reporting requirements of 40 CFR Part 70.6(c)(5) and 10 CSR 10-6.065(6)(C)3.E. The annual compliance certification is a summarization of the compliance status for the installation over the past year.

The APCP developed forms for the ACC and SAM reports. A copy of the forms and instructions, identifying the information to be contained in the forms, is available at the following web address: <http://www.dnr.state.mo.us/oac/forms/index.html>. The local agencies have agreed to modify their reports to be consistent with the state reports. The instructions for the ACC and SAM reports clearly state that the ACC and the second SAM report can be combined into one report. In addition, the instructions state the installation can reference previously submitted reports regarding deviations and exceedance rather than reiterating the information in the ACC and SAM reports. Examples of the previously submitted reports, which can be referenced, are as follows: imminent and substantial danger, emergencies and upsets, deviation/exceedances from quantifiable emission limitations/operating parameter ranges and continuous monitoring systems (operating parameters, emissions, etc.).

For clarification purposes, the annual compliance certifications are required to be submitted to both the permitting authority and EPA Region VII, as specified in 10 CSR 10-6.065(6)(C)3.E., 40 CFR Part 70.6(c)(5) and the instructions posted on the web. In addition, the General Provisions Section of the Operating Permit under Compliance Requirements has been identifying the annual compliance certification requirements since the development of the operating permits; and began identifying the reports had to be submitted to the Administrator and permitting authorities as of March 2003.

Appendix A: References

Missouri Regulations

10 CSR 10-6.050(3)(A) – Start-Up, Shutdown and Malfunction Conditions:

(3) General Provisions.

- (A) In the event of a malfunction, which results in excess emissions that exceeds one (1) hour, the owner or operator of such facility shall notify the Missouri Department of Natural Resources' Air pollution Control Program in the form of a written report which shall be submitted within two (2) business days. The written report shall include, at a minimum, the following:

10 CSR 10-6.065(6)(C)1.C.(III) – Operating Permits:

(III) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

- (a) A permit issued under these rules shall require the permittee to submit a report of any required monitoring every six (6) months. To the extent possible, the schedule for submission of these reports shall be timed to coincide with other periodic reports required by permit, including the permittee's annual compliance certification;
- (b) Each report submitted under subpart (6)(C)1.C.(III)(a) of this rule shall identify any deviations from permit requirements, since the previous report, that have been monitored by the monitoring systems required under the permit, and any deviations from the monitoring, record keeping and reporting requirements of the permit;
- (c) In addition to semiannual monitoring reports, each permittee shall be required to submit supplemental reports as indicated here. All reports of deviations shall identify the cause or probable cause of the deviations and any corrective actions or preventative measures taken.
 - I. Notice of any deviation resulting from an emergency (or upset) condition as defined in paragraph (6)(C)7. of this rule shall be submitted to the permitting authority either verbally or in writing within two (2) working days after the date on which the emission limitation is exceeded due to the emergency, if the permittee wishes to assert an affirmative defense. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that indicate an emergency occurred and the permittee can identify the cause(s) of the emergency. The permitted facility must show that it was operated properly at the time and that during the period of emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or requirements in the permit. The notice must contain a description of the emergency, steps taken to mitigate emissions and the corrective actions taken.
 - II. Any deviation that poses an imminent and substantial danger to public health, safety or the environment shall be reported as soon as practicable.
 - III. Any other deviations identified in the permit as requiring more frequent reporting than the permittee's semiannual report shall be reported on the schedule specified in the permit;

- (d) Every report submitted shall be certified by a responsible official, except that, if a report of a deviation must be submitted within ten (10) days after the deviation, the report may be submitted without a certification if the report is resubmitted within an appropriate certification within ten (10) days after that, together with any corrected or supplemental information required concerning the deviation; and
- (e) A permittee may request confidential treatment of information submitted in any report of deviation.

10 CSR 10-6.065(6)(C)3.E. – Operating Permits:

- (E) Compliance certification. The permit must include requirements for certification of compliance with terms and conditions contained in the permit that are federally enforceable, including emissions limitations, standards or work practices. The permit shall specify:
 - (I) The frequency (which shall be annually unless the applicable requirement specifies submission more frequently) of compliance certifications.
 - (II) The means for monitoring compliance with emissions limitations, standards and work practices contained in applicable requirements.
 - (III) A requirement that the compliance certification include the following:
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 - (IV) A requirement that all compliance certifications be submitted to the administrator as well as to the permitting authority.
 - (V) Additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act; and
 - (VI) Any other provisions as the permitting authority may require.

10 CSR 10-6.065(6)(C)7.A.- Operating Permits:

7. Emergency provisions.

- A. Definition. For the purposes of a part 70 operating permit, an emergency or upset means any condition arising from sudden and not reasonably foreseeable events beyond the control of the permittee, including acts of God, which require immediate corrective action to restore normal operation and that causes the installation to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency or upset. An emergency or upset shall not include non-compliance cause by improperly designed equipment, lack of preventative maintenance, careless or improper operation or operator error.

Federal Regulations

40 CFR Part 63, Subpart A, §63.6(e)(3)(iii),(iv), (viii) and (ix) – National Emission Standards for Hazardous Air Pollutants for Source Categories – General Provisions:

- (iii) When actions taken by the owner or operator during a startup, shutdown or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown and malfunction plan, the owner or operator must keep records for that event which h

demonstrate that the procedures specified in the plan are followed. These records may take the form of a "checklist," or other effective form of record keeping that confirms conformance with the startup, shutdown, and malfunction plan for that event. In addition, the owner or operator must keep records of these events as specified in §63.10(b), including records of the occurrence and duration of each startup, shutdown or malfunction of operation and each malfunction of the air pollution control and monitoring equipment. Furthermore, the owner or operator shall confirm that actions taken during the relevant reporting period during periods of startup, shutdown and malfunction were consistent with the affected source's startup, shutdown and malfunction plan in the semiannual (or more frequent) startup, shutdown and malfunction report required in §63.10(d)(5).

- (iv) If an action taken by the owner or operator during a startup, shutdown or malfunction (including an action taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown and malfunction plan, and the source exceeds the relevant emission standard, then the owner or operator must record the actions taken for that event and must report such actions within two working days after commencing actions inconsistent with the plan, followed by a letter within seven working days after the end of the event, in accordance with §63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the Administrator).

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(viii) The owner or operator may periodically revise the startup, shutdown and malfunction plan for the affected source as necessary to satisfy the requirements of this part or to reflect changes in equipment or procedures at the affected source. Unless the permitting authority provides otherwise, the owner or operators may make such revisions to the startup, shutdown and malfunction plan without prior approval by the Administrator or the permitting authority. However, each such revision to a startup, shutdown and malfunction plan must be reported in the semiannual report required by §63.10(d)(5). If the startup, shutdown and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown and malfunction plan at the time the owner or operator developed the plan, the owner or operator must revise the startup, shutdown and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control and monitoring equipment. In the event that the owner or operator makes any revision to the startup, shutdown and malfunction plan which alters the scope of the activities at the source which are deemed to be a startup, shutdown, malfunction or otherwise modifies the applicability of any emission limit, work practice requirement, or other requirement in a standard established under this part, the revised plan shall not take effect until after the owner or operator has provided a written notice describing the revision to the permitting authority

- (ix) The Title V permit for an affected source must require that the owner or operator adopt a startup, shutdown, and malfunction plan which conforms to the provisions of this part, and that the owner or operator operate and maintain the source in accordance with the procedures specified in the current startup, shutdown, and malfunction plan. However, any revisions made to the startup, shutdown and malfunction plan in accordance with the procedures established by this part shall not be deemed to constitute permit revisions under part 70 or part 71 of the chapter. Moreover, none of the procedures specified by the startup,

shutdown and malfunction plan for an affected source shall be deemed to fall within the permit shield provision in section 504(f) of the Act.”

40 CFR Part 63, Subpart A, §63.10(d)(5) - National Emission Standards for Hazardous Air Pollutants for Source Categories – General Provisions:

- (i) Periodic startup, shutdown and malfunction reports. If actions taken by an owner or operator during a startup, shutdown or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source’s startup, shutdown and malfunction plan [see §63.6(e)(3)], the owner or operator shall state such information in a startup, shutdown or malfunction report. Reports shall only be required if a startup, shutdown or malfunction occurred during the reporting period, and they must include the number, duration and a brief description of each startup, shutdown or malfunction. The startup, shutdown and malfunction report shall consist of a letter, containing the name, title and signature of the owner or operator or other responsible official who is certifying its accuracy, that shall be submitted to the Administrator semiannually (or on a more frequent basis specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source’s title V permit). The startup, shutdown and malfunction report shall be delivered or postmarked by the 30th day following the end of each calendar half (or other calendar reporting period, as appropriate). If the owner or operator is required to submit excess emission and continuous monitoring system performance (or other periodic) reports under this part, the startup, shutdown and malfunction reports required under this paragraph may be submitted simultaneously with the excess emissions and continuous monitoring system performance (or other) reports. If startup, shutdown and malfunction reports are submitted with excess emissions and continuous monitoring system performance (or other periodic) reports, and the owner or operator receives approval to reduce the frequency of reporting for the latter under paragraph (e) of this section, the frequency of reporting for the startup, shutdown and malfunction reports also may be reduced if the Administrator does not object to the intended change. The procedures to implement the the allowance in the preceding sentence shall be the same as the procedures of paragraph (e)(3) of this section.
- (ii) Immediate startup, shutdown and malfunction reports. Notwithstanding the allowance to reduce the frequency of reporting for periodic startup, shutdown and malfunction reports under paragraph (d)(5)(i) of this section, any time an action taken by an owner or operator during a startup, shutdown or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures specified in the affected source’s startup, shutdown and malfunction plan, the owner or operator shall report the actions taken for that event within two working days after commencing actions inconsistent with the plan followed by a letter within seven working days after the end of the event. The immediate report required under the paragraph shall consist of a telephone call (or facsimile (FAX) transmission) to the Administrator within two working days after commencing actions inconsistent with the plan, and it shall be followed by a letter, delivered or postmarked within seven working days after the end of the event, that contains the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstance of the event, the reasons for not following the startup, shutdown

and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred. Notwithstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph are specified in §63.9(i).

40 CFR §64.1 – Compliance Assurance Monitoring:

Exceedance shall mean a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

Excursion shall mean a departure from an indicator range established for monitoring under this part, consistent with any averaging period specified for averaging the results of the monitoring.

40 CFR §70.6(a)(3)(iii) – State Operating Permit Programs:

(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

- (A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with §70.5(d) of this part.
- (B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations and any corrective actions or preventative measures taken. The permitting authority shall define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements.

40 CFR §70.6(c)(5) and 71.6(c)(5) – State and Federal Operating Permit Programs:

- (5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards or work practices. Permits shall include each of the following:
 - (i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications.
 - (ii) In accordance with §70.6(a)(3)/71.6(a)(3) of this part, a means for monitoring the compliance of the source with its emissions limitations, standards and work practices;
 - (iii) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable);

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- (iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority.

40 CFR §71.6(a)(3)(iii) – Federal Operating Permit Programs:

(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

- (A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with §71.5(d).
- (B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations and any corrective actions or preventative measures taken. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted to the permitting authority based on the following schedule:

- (1) For emissions of hazardous air pollutant or a toxic air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made within 24 hours of the occurrence.
- (2) For emissions of any regulated air pollutant, excluding those listed in paragraph (a)(3)(iii)(B)(1) of this section, that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours.
- (3) For all other deviations from permit requirements, the report shall be contained in the report submitted in accordance with the time frame given in paragraph (a)(3)(iii)(A).

- (4) A permit may contain a more stringent reporting requirement than required by paragraphs (a)(3)(iii)(B)(1), (2) or (3).
If any of the above conditions are met, the source must notify the permitting authority by telephone or facsimile based on the timetable listed in paragraphs (a)(3)(iii)(B)(1) through (B)(4) of this section. A written notice, certified consistent with §71.5(d), must be submitted within 10 working days of the occurrence. All deviations reported under paragraph (a)(3)(iii)(A) of this section must also be identified in the 6 month report required under paragraph (a)(3)(iii)(A) of this section.

- (C) For purposes of paragraph (a)(3)(iii)(B) of this section, deviation means any situation in which an emissions unit fails to meet a permit term or condition. A deviation is not always a violation. A deviation can be determined by observation or thorough review of data obtained from any testing, monitoring or record keeping established in accordance with paragraphs (a)(3)(I) and (a)(3)(ii) of this section. For a situation lasting more than 24 hours which constitutes a deviation, each 24 hour period is considered a separate deviation. Included in the meaning of deviation are any of the following:

- (1) A situation where emissions exceed an emission limitation or standard;
- (2) A situation where process or emissions control device parameter values indicate that an emission limitation or standard has not been met;

- (3) A situation in which observations or data collected demonstrates non-compliance with an emission limitation or standard or any work practice or operating condition required by the permit;
- (4) A situation in which an exceedance or excursion, as defined in part 64 of this chapter, occurs.

July 1, 1996 Federal Register Notice for the 40 CFR Part 71 Operating Permit Program:

“4. Definition of Prompt Reporting

The proposal contained provisions concerning prompt reporting of deviations from permitting requirements at proposed sections 71.6(f) (3) and (4). The final rule at section 71.6(a)(3)(iii) requires that each permit contain provisions for prompt notification of deviations.

Two commenters requested that the prompt reporting deadlines in part 71 be adjusted to reflect other environmental regulation timelines or to reflect State program guidelines that have been approved by the Agency for part 70 programs. The Agency disagrees with the request. Section 503(b)(2) of the Act requires permittees to promptly report any deviations from permit requirements to the permitting authority. Since individual permitting authorities are responsible for having programs to attain and/or maintain air quality within their geographical boundaries, they are obligated under the operating permits program to determine, among other things, what constitutes a prompt notification. Included as factors in determining prompt notification would be elements such as pollutant concentration, deviation duration, and authority response time. Because sources and pollutants of concern vary among permitting authorities, States have adopted differing prompt reporting schedules. The Agency has reviewed its obligation to protect air quality on a national level, and has determined that its prompt reporting deadline is appropriate for this obligation. Therefore the deadlines contained in part 71 remain unchanged from the proposal.

Two commenters requested that part 71 clarify prompt reporting requirements for deviations other than those associated with hazardous, toxic, or regulated air pollutants, as described in sections 71.6(a)(3)(iii)(B)(1) and (2).

The Agency believes that the requirement contained in section 71.6(a)(3)(iii)(A), in which sources are to report all instances of deviations from permit requirements at least every 6 months, provides the basis for prompt reporting of all other deviations. However, the Agency is willing to clarify this reporting requirement and has modified section 71.6(a)(3)(iii)(B) by adding a statement that directs sources to submit all other deviation reports in accordance with the timeframe given in section 71.6(a)(3)(iii)(A).”

EPA determined that the rules submitted to EPA as part of the initial program approvals did not require that prompt be defined in the rules. According to many federal register notices completed prior to and after the July 1, 1996 Federal Register Notice regarding the interim and full approval of operating permits for states (Mississippi, Colorado, California, New Hampshire, etc) and local agencies (California local agencies, etc):

“Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. EPA believes that prompt should generally be defined as

requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Where “prompt” is defined in the individual permit but not in the program regulations, EPA may veto permits that do not require sufficiently prompt reporting of deviations.”

The states or regulatory agencies which did not define “prompt” in program regulations with respect to reporting of deviations committed to define “prompt” in each individual permit.

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